Supreme Court, U.S.
FILED
MAR 20 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-1229

RAY A. GARCIA,

Petitioner,

v.

STATE OF INDIANA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

RESPONSE IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

LINLEY E. PEARSON
Attorney General of Indiana

WILLIAM E. DAILY
Deputy Attorney General

LISA M. PAUNICKA
Deputy Attorney General

Office of the Attorney General
219 State House
Indianapolis, Indiana 46204

Attorneys for Respondent

Central Publishing Company, Inc., Indianapolis, IN 46206

2 OPP

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTION PRESENTED FOR REVIEW

Whether it is an unreasonable seizure under the Fourth and Fourteenth Amendments to stop an automobile, being driven on a public highway, for the purpose of determining if the operator is properly licensed, legally intoxicated, or driving a licensed vehicle, where there is neither probable cause nor reasonable suspicion that the vehicle is being driven contrary to the laws governing the operation of motor vehicles.

TABLE OF CONTENTS

Page:

Question Presented for Review i

Table of Authorities ..... iii-iv

Opinion Below 1

Statement of the Case 2-4

Argument:

I. SINCE THE JUDGMENT OF THE INDIANA SUPREME COURT IS NOT A FINAL JUDGMENT, THE WRIT MUST BE DISMISSED .. 4-7

II. WHILE THE INDIANA SUPREME COURT DECIDED A FEDERAL QUESTION, THE QUESTION IS NOT SUBSTANTIAL SINCE IT HAS ALREADY BEEN RESOLVED BY PRIOR DECISIONS OF THE UNITED STATES SUPREME COURT 7-15

Conclusion 15

TABLE OF AUTHORITIES

Cases:	*Pages:*
Brown v. Texas, 443 U.S. 47, 99 S.Ct. 2637 (1979)	11
Chapman v. California, 405 U.S. 1020, 92 S.Ct. 1284 (1972)	5
Commonwealth v. McGeoghegan, 389 Mass. 137, 141, 449 N.E.2d 349, 353, (1983).....	13
Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 477, 95 S.Ct. 1029, 1037 (1975)	5
Delaware v. Prouse, 440 U.S. 648, 99 S.Ct. 1391 (1979).	9-14
Equitable Life Assurance Society v. Brown, 187 U.S. 308, 23 S.Ct. 123 (1902).....	7
Flynt v. Ohio, 451 U.S. 619, 620, 101 S.Ct. 1958, 1959 (1981)	5
Market Street Ry. Co. v. Railroad Comm., 324 U.S. 548, 551, 65 S.Ct. 770, 772-773 (1945).....	4
Michigan v. Clifford, _____ U.S. _____, 104 S.Ct. 641 (1984)	5
Mincey v. Arizona, 434 U.S. 1343, 1344, 98 S.Ct. 23, 24 (1977)	7
Mowrer v. Fletcher, 114 U.S. 127, 128, 5 S.Ct. 799, 800 (1885)	4
New York v. Quarles, _____ U.S. _____, 104 S.Ct. 2626 (1984).....	6
Parr v. United States, 351 U.S. 513, 518, 76 S.Ct. 912, 916 (1956)	5
Radio Station WOW, Inc. v. Johnson, 326 U.S. 120, 123-124, 65 S.Ct. 1475, 1477-1478 (1945)	5
Republic National Gas Co. v. Oklahoma, 334 U.S. 62, 67, 68 S.Ct. 972, 976 (1948).....	4

State v. Deskins, 234 Kan. 529, 542, 673 P.2d 1174, 1185 (1983) 13

Union Pacific Railway Co. v. Botsford, 141 U.S. 250, 11 S.Ct. 1000 (1891) 7, 8

United States v. Brignoni-Ponce, 422 U.S. 873, 95 S.Ct. 2574 (1975) 8

United States v. Martinez-Fuerte, 428 U.S. 543, 96 S.Ct. 3074 (1976) 8, 9

United States v. Prichard, 645 F.2d 854 (10th Cir. 1981), *cert. denied*, 454 U.S. 832, 102 S.Ct. 130 (1981) 12

Zucht v. King, 260 U.S. 174, 43 S.Ct. 24 (1922) 7

Statute:

28 U.S.C. § 1257 ..... 4, 6, 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-1229

RAY A. GARCIA,

Petitioner,

v.

STATE OF INDIANA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

RESPONSE IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Respondent, the State of Indiana, respectfully requests that the Court deny the petition for a writ of certiorari which seeks review of an opinion of the Supreme Court of Indiana since a substantial federal question has not been raised.

OPINION BELOW

The Supreme Court of Indiana entered an opinion in this cause on November 21, 1986. The opinion is set forth in the Petitioner's Appendix at A-1 and is officially reported at 500 N.E.2d 158.

STATEMENT OF THE CASE

In conjunction with a state-wide program and in cooperation with the Hendricks County Sheriff's Department, the Indiana State Police conducted a roadblock on U.S. 40, two and one-half miles east of the town of Plainfield in Hendricks County. The purpose of the roadblock was to check for improperly licensed drivers, improperly registered automobiles, underage drinking, and persons driving while intoxicated. Prior to the roadblock, the State Police publicized, in various newspapers, the general plan to conduct roadblocks but did not specify the location of the roadblocks.

The particular location of the roadblock at issue was selected by Officer James Cramer, Supervisor of the Indiana State Police in Hendricks County, and Officer Daniel Williams of the Hendricks County Sheriff's Department. The officers' decision was based upon information, obtained from State Police records, which disclosed that the particular location generated numerous fatal and nonfatal accidents involving alcohol. In addition, the roadblock was implemented in accordance with a plan that had been previously devised by Marion County and Morgan County Police Departments and which was later adopted by the State Police. Recent United States Supreme Court roadblock decisions guided the development of the plan.

According to the plan, westbound traffic on U.S. 40 was stopped by approximately eleven uniformed officers who were visible on the highway. These officers blocked off the left westbound lane and all traffic was funneled into the right westbound lane by means of flares and the lights from police cars.[1] Nonselectively, cars were stopped in consecutive groups of five.[2] Absent the detection of drinking or other violations, drivers were detained for no more than two or three minutes during which time other traffic was permitted to pass. After a group of

---

[1] In addition, the roadblock area was well-lighted. Indeed, numerous motorists, upon sighting the roadblock, reversed their direction and fled.

[2] The officers had absolutely no discretion to depart from this procedure.

five vehicles had been inspected and released, the next group of five cars traveling west was detained and the procedure was repeated.

Upon the discovery of an operating violation or the detention of alcohol consumption, the driver was instructed to drive into a nearby parking lot. A driver suspected of alcohol consumption was given a field blood alcohol test. Any driver whose blood alcohol content was over the presumptive limit of .10 was transported to the Hendricks County jail where a breathalyzer test was administered. If the driver failed the breathalyzer test, he or she was arrested.

The Petitioner, Ray Garcia, who exhibited no erratic or suspicious driving, was among the first group of five cars stopped. When the Petitioner was unable to produce an operator's license, an officer who recognized the Petitioner stated that the Petitioner's license had been suspended. After detecting the odor of alcohol, the officer read to the Petitioner an implied consent statement. Subsequently, the Petitioner agreed to take a field sobriety test which he failed. Upon his failure of a breathalyzer test, the Petitioner was arrested. The Petitioner was charged with his second offense of driving while intoxicated.[3]

Prior to trial, the Petitioner filed a motion to suppress the evidence of driving while intoxicated which was obtained at the roadblock. The trial court granted the motion. The State appealed the ruling to the Court of Appeals of Indiana. The Court of Appeals reversed the ruling of the trial court and stated that the roadblock procedures employed were constitutionally sound.[4] Thereafter, the Petitioner filed a petition for rehearing which was denied by the Court of Appeals.[5] Subse-

---

[3] The roadblock continued for two hours. During this time, approximately 100 cars were stopped, 20 citations were issued, and seven persons were arrested for driving while intoxicated.

[4] The decision of the Court of Appeals is officially reported at 481 N.E.2d 148.

[5] The Court of Appeals' decision to deny the petition for rehearing is officially reported at 489 N.E.2d 168.

quently, the Petitioner filed a petition for transfer which was granted by the Supreme Court of Indiana. The Supreme Court of Indiana affirmed the decision of the Court of Appeals.[6]

REASONS FOR DENYING THE WRIT

I.
SINCE THE JUDGMENT OF THE INDIANA SUPREME COURT IS NOT A FINAL JUDGMENT, THE WRIT MUST BE DISMISSED

The jurisdiction of the Supreme Court to review a decision of a state court is codified in 28 U.S.C. § 1257. The first jurisdictional predicate of § 1257 is that there be a final judgment or decree rendered by "the highest court of a State in which a decision could be had." The final judgment must reflect a substantial federal question that has been properly raised and necessarily decided in the state court proceedings. Generally, a state court judgment must be final in two respects: "[i]t must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It must be the final word of a final court." *Market Street Ry. Co. v. Railroad Comm.*, 324 U.S. 548, 551, 65 S.Ct. 770, 772-773 (1945).[7] The finality requirement of § 1257 serves several ends: (1) it avoids piecemeal review by federal courts of state court decisions, *Republic National Gas Co. v. Oklahoma*, 334 U.S. 62, 67, 68 S.Ct. 972, 976 (1948); (2) it avoids giving advisory opinions in cases where there may be no real 'case' or 'controversy' in the sense of Article III; and (3) it limits federal

---

[6] The Supreme Court's decision which affirmed the ruling of the Court of Appeals is officially reported at 500 N.E.2d 158.

[7] Under the most basic traditional definition, a final judgment is one that:

> [T]erminates the litigation between the parties on the merits of the case, so that, if there should be an affirmance here, the court below would have nothing to do but to execute the judgment it had already rendered . . . nothing remains to be done but to require the inferior court to perform the ministerial act of entering the judgments in that court which have been ordered . . . nothing is left to the judicial discretion of the court below.

Mowrer v. Fletcher, 114 U.S. 127, 128, 5 S.Ct. 799, 800 (1885).

review of state court determinations of federal constitutional issues to leave at a minimum federal intrusion in state affairs. *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 123-124, 65 S.Ct. 1475, 1477-1478 (1945).

In criminal proceedings, the final judgment is the sentence. *Parr v. United States*, 351 U.S. 513, 518, 76 S.Ct. 912, 916 (1956); *Flynt v. Ohio*, 451 U.S. 619, 620, 101 S.Ct. 1958, 1959 (1981). In prior cases, the Supreme Court ruled that a state court judgment which merely denies a motion to dismiss an indictment or disposes of a motion relating to the admission of evidence lacks the finality necessary to support review by the Supreme Court. *See Chapman v. California*, 405 U.S. 1020, 92 S.Ct. 1284 (1972). Nevertheless, the Supreme Court has departed from this traditional view. In *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 477, 95 S.Ct. 1029, 1037 (1975), the Supreme Court identified four categories of cases where a decision of the highest state court will be treated as final even though further proceedings are anticipated in the lower state courts.[8]

Several recent decisions in which certiorari was granted by the Supreme Court involved a motion to suppress. In *Michigan v. Clifford*, _____ U.S. _____, 104 S.Ct. 641 (1984), the defendants were charged with arson. Prior to trial, the defendants moved to suppress certain physical evidence which was obtained by means of a warrantless and non-consensual search

---

[8] The four categories enumerated in *Cox* are as follows: (1) cases in which there are further proceedings — even entire trials — yet to occur in the state courts, but the federal issue is conclusive or the outcome of further proceedings is preordained; (2) cases in which the federal issue, finally decided by the highest court in the state, will survive and require decision regardless of the outcome of future state court proceedings; (3) cases where the federal claim has been finally decided, with further proceedings on the merits in the state courts to follow, but in which later review of the federal issue cannot be had whatever the outcome of the case; and finally (4) cases where the federal issue has been finally decided in the state courts with further proceedings pending in which the party seeking review might prevail on the merits or nonfederal grounds, thus rendering unnecessary review of the federal issue by the Supreme Court, and where reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action rather than merely controlling the nature and character of, or determining the admissibility of evidence in, the state proceedings still to come.

of the defendants' home. Following a hearing, the trial court denied the motion. The trial court certified its evidentiary ruling for interlocutory appeal and the Michigan Court of Appeals reversed. Certiorari was subsequently granted. In *New York v. Quarles*, _____ U.S. _____, 104 S.Ct. 2626 (1984), a police officer detained the defendant since he matched the description of an assailant in possession of a gun. The defendant advised the officer where he had hid the gun. The officer retrieved the gun, arrested the defendant, and read the *Miranda* warnings to him. The defendant admitted to the officer that he owned the gun. Prior to trial, the trial court suppressed the defendant's initial statement and the gun because he had not been given the *Miranda* warnings. The trial court also suppressed the defendant's other statements as evidence tainted by the *Miranda* violation.

Later, the New York Court of Appeals affirmed the decision of the trial court. In granting certiorari, the Supreme Court ruled that the ruling of the New York Court of Appeals was a final judgment for purposes of 28 U.S.C. § 1257, even though the defendant had yet to be tried in state court. The Supreme Court noted that the federal claim had been finally decided and later review of the federal issue could not be had whatever the ultimate outcome of the case. The Supreme Court observed that should the state convict the defendant at trial, its claim that certain evidence was wrongfully suppressed will be moot. Should the defendant be acquitted, the state will be precluded from raising its federal claim again on appeal.

In the present case, the Petitioner was charged with the offense of driving while intoxicated. Prior to trial, the Petitioner filed a motion to suppress the results of the field sobriety test and breathalyzer test on the basis that the roadblock was unconstitutional. The trial court granted the motion. The Respondent appealed the ruling to the Court of Appeals. The Indiana appellate courts reversed the ruling of the trial court, stated that the roadblock was proper, and remanded the case for trial. The decision of the Indiana Supreme Court is not a final judgment.

If the Respondent convicted the Petitioner at trial, the Petitioner's claim that certain evidence obtained at the roadblock was improperly admitted into evidence would be proper for review. If the Petitioner, however, was acquitted at trial, the federal claim obviously would not be raised by the Respondent. Accordingly, the writ should be dismissed for lack of jurisdiction. *See Mincey v. Arizona*, 434 U.S. 1343, 1344, 98 S.Ct. 23, 24 (1977).

II.

WHILE THE INDIANA SUPREME COURT DECIDED A FEDERAL QUESTION, THE QUESTION IS NOT SUBSTANTIAL SINCE IT HAS ALREADY BEEN RESOLVED BY PRIOR DECISIONS OF THE UNITED STATES SUPREME COURT

Under 28 U.S.C. § 1257, there must be a federal question to invoke the jurisdiction of the Supreme Court. The mere presence of a federal question will not warrant review, however, unless that federal question is "substantial." Even though a question as to federal law has been raised, if it appears that the question is wholly formal, or is so absolutely devoid of merit as to be frivolous, or has been explicitly foreclosed by a decision or decisions of the Supreme Court so as to lack real controversy, the Supreme Court will not assume jurisdiction of the case. *Equitable Life Assurance Society v. Brown*, 187 U.S. 308, 23 S.Ct. 123 (1902); *Zucht v. King*, 260 U.S. 174, 43 S.Ct. 24 (1922). Since the Indiana Supreme Court deemed that the roadblock at issue was constitutional and the decision was based on similar, recent United States Supreme Court opinions, the federal question is not substantial and the writ should be denied.

When a government official or law enforcement officer stops an individual and restrains his or her freedom of mobility, a "seizure," under the Fourth Amendment, has occurred. Indeed, in *Union Pacific Railway Co. v. Botsford*, 141 U.S. 250, 11 S.Ct. 1000 (1891), the Supreme Court stated:

> No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.

Since a detention by means of the use of a roadblock constitutes a seizure within the meaning of the Fourth Amendment, it must be reasonable.

Federal law regarding the authority of law enforcement agencies to stop a vehicle and subject its occupants to questioning originated in cases involving the detection of illegal aliens near the Mexican border. In *United States v. Brignoni-Ponce*, 422 U.S. 873, 95 S.Ct. 2574 (1975), the Supreme Court addressed the practice of using roving patrols to stop vehicles to search for illegal aliens based upon criteria such as the apparent Mexican ancestry of the occupant. The Supreme Court concluded that although the public interest in stemming the flow of illegal immigrants into the United States was substantial, the intrusion of roving patrols was too great:

> [T]he nature of illegal alien traffic and the characteristics of smuggling operations tend to generate articulable grounds for identifying violators. Consequently, a requirement of reasonable suspicion for stops allows the government adequate means of guarding the public interest and also protects residents of the border areas from indiscriminate official interference.

Id. at 883, 95 S.Ct. at 2581.

The requirement of individualized suspicion set forth in *Brignoni-Ponce*, was later rejected in *United States v. Martinez-Fuerte*, 428 U.S. 543, 96 S.Ct. 3074 (1976). In *Martinez-Fuerte*, the border patrol routinely stopped vehicles at a permanent checkpoint on a major highway away from the Mexican border for brief questioning of the vehicle's occupants. The defendant was charged with illegally transporting aliens and with other immigration offenses. The defendant moved to suppress evidence that was seized at the allegedly unconstitutional roadblock. The Supreme Court ruled that the detention of a vehicle, at a fixed checkpoint — even without reasonable suspicion that the vehicle contained illegal aliens, is consistent with

the Fourth Amendment. The Supreme Court balanced the public interest in preventing illegal immigration against the privacy rights guaranteed to individuals by the Fourth Amendment:

> This objective intrusion — the stop itself, the questioning, and the visual inspection — also existed in the roving patrol stops. But we view checkpoint stops in a different light because the subjective intrusion — the generating of concern or even fright on the part of lawful travelers — is appreciably less in the case of a checkpoint stop.

Id. at 558, 96 S.Ct. at 3083.[9]

In *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391 (1979), the Supreme Court authorized the continued use of roadblocks and checkpoints. In *Prouse*, a police officer stopped the defendant's vehicle to conduct a routine license and registration check. The officer had no probable cause or reasonable suspicion that the defendant or any passengers in the vehicle had violated any law or regulation at the time of the stop. When the officer, however, approached the vehicle, he smelled marijuana smoke and seized a bag of marijuana lying in plain view on the floor of the car. The defendant was charged with illegal possession of a controlled substance. The defendant moved to suppress the marijuana seized during the investigatory stop on the basis that the

---

[9] The Supreme Court observed that the following procedures were used by the border patrol officers at the fixed checkpoint: (1) a large sign was located one mile before the checkpoint with flashing lights warning, "ALL VEHICLES, STOP AHEAD, 1 MILE"; (2) three quarters of a mile later, two more signs over the highway with flashing lights read "WATCH FOR BRAKE LIGHTS"; (3) the checkpoint was located at a California State weigh station; (4) at the checkpoint, two large flashing signs read "STOP HERE--U.S. OFFICERS"; (5) orange traffic cones were placed on the highway funneling traffic into two lanes where a border patrol agent in full uniform stood beside a sign reading "STOP"; (6) U.S. border patrol vehicles, with flashing lights, blocked traffic in unused lanes; (7) a permanent building was used for temporary detention facilities; (8) floodlights were used during nighttime operation; (9) a "point agent" usually screened vehicles as he brought them to virtually a complete stop, and if further investigation was necessary, directed motorists to a secondary investigation area; (10) average duration of stop in secondary investigation was three to five minutes. *United States v. Martinez-Fuerte*, supra, 543 U.S. at 545-546, 96 S.Ct. at 3076-3078.

stop was unconstitutional.[10] On appeal, the Supreme Court balanced the defendant's Fouth Amendment interests against legitimate governmental interests.

In reviewing the privacy interests of individuals subjected to random stops, the Supreme Court recognized the importance of travel and observed that individuals find a greater sense of security in traveling in an automobile than in other modes of travel. The Supreme Court noted that an individual operating or traveling in a vehicle does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation. In addition, the Supreme Court acknowledged that states have a vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles, that the vehicles are fit for safe operation, and that licensing, registration, and vehicle inspection requirements are being observed. The Supreme Court determined, however, that the enormity of the intrusion of a program of roving spot checking was not sufficiently productive to justify the invasion upon Fourth Amendment interests. The Supreme Court stated, however, that questioning all oncoming traffic at a roadblock-type stop might tip the balance of interests in favor of precluding a requirement of reasonable suspicion because a permanent checkpoint is less intrusive than random stops. Finally, the Supreme Court noted:

> Accordingly, we hold that except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of the law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment. *This holding does not preclude the State of Delaware or other States from developing methods for spot checks that*

[10] At the suppression hearing, the officer stated that at the time he stopped the defendant, he was not acting pursuant to any standards or procedures governing roving patrol stops.

> *involve less intrusion or that do not involve the unconstrained exercise of discretion. Questioning of all oncoming traffic at roadblock-type stops is one possible alternative.* We hold only that persons in automobiles on public roadways may not for that reason alone have their travel and privacy interfered with at the unbridled discretion of police officers. (Emphasis added).

Delaware v. Prouse, 440 U.S. at 664, 99 S.Ct. at 1401.

Later, in *Brown v. Texas*, 443 U.S. 47, 99 S.Ct. 2637 (1979), the Supreme Court declared a Texas statute unconstitutional under the Fourth Amendment where it allowed police to detain a person and require that person to identify himself, even where the officers lacked probable cause or any reasonable suspicion to believe that the person was engaged or had engaged in criminal conduct. The Supreme Court stated:

> A central concern in balancing [the competing] considerations of public need and individual liberty has been to assure that an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field. (Citations omitted). To this end, the Fourth Amendment requires that a seizure must be based on specific, objective facts indicating that society's legitimate interests require the seizure of the particular individual, or that the seizure must be carried out pursuant to a plan embodying explicit neutral limitations on the conduct of individual officers.

Id. 443 U.S. at 51, 99 S.Ct. at 2640.

In the case at bar, the stopping of the Petitioner's vehicle was a seizure within the meaning of the Fourth and Fourteenth Amendments and was required by those amendments to be reasonable. Applying the principles of the foregoing cases, it is necessary to balance the public interest in roadblocks against the Petitioner's Fourth Amendment interests. There can be no doubt that there is an overwhelming public and governmental interest in pursuing methods to curtail the unsafe driver. The use of a traffic safety roadblock has principally two purposes: (1) to apprehend and to remove the drunk or unlicensed driver

from the streets before injury or property damage results, and (2) to serve as a deterrent to convince the drunk or unlicensed driver to refrain from driving in the first place.

An opinion of a federal court of appeals, decided subsequent to *Delaware v. Prouse*, *supra*, provides assistance in an identification of factors that are significant to a determination of whether a roadblock spot check method of discovering unsafe drivers is a sufficiently reasonable accommodation of the public's interest in highway safety with the individual's right to personal security so as to be permissible under the United States Constitution. In *United States v. Prichard*, 645 F.2d 854 (10th Cir. 1981), *cert. denied*, 454 U.S. 832, 102 S.Ct. 130 (1981), the court considered a roadblock operated by two New Mexico state police officers for the avowed purpose of checking drivers' licenses and vehicle registrations. The roadblock was conducted with the permission of the officers' supervisor. All westbound vehicles, except semi-trucks, were to be stopped. When the vehicles began to pile up, the officers allowed the vehicles to pass and did not resume checking until traffic had cleared. The Court of Appeals stated:

> In our view, the roadblock stop of the [defendant's car] does not run afoul of the rule of *Prouse*. While this may not have been a '100% roadblock' of the type referred to in *Prouse*, it is nonetheless a long way from the selective, single car stop denounced in *Prouse*. In the instant case, the New Mexico state police were attempting to stop all westbound traffic on an interstate highway, insofar as was humanly possible. The decision not to stop trucks was reasonable under the circumstances, because, presumably, they had all been stopped at a port of entry. The purpose of the roadblock, *i.e.*, to check drivers' licenses and car registrations, was a legitimate one. If, in the process of so doing, the officers saw evidence of other crimes, they had the right to take reasonable investigative steps and were not required to close their eyes. *See United States v. Merryman*, 630 F.2d 780, 782-85 (10th Cir. 1980). Furthermore, allowing all the stopped cars through when traffic became congested was also reason-

> able and, in our view, non-violative of the rule of *Prouse*. In sum, the roadblock stop of the [defendant's car] was, under the described circumstances, constitutional.

Id. at 856-857.

Several courts have indicated that under the proper circumstances, roadblocks — even for the express purpose of detecting intoxicated drivers, could meet the constitutional restrictions and be valid. For example, in *Commonwealth v. McGeoghegan*, 389 Mass. 137, 141, 449 N.E.2d 349, 353, (1983) the Massachusetts Supreme Court identified the following criteria: (1) that the inconvenience to the motorist be minimized; (2) that the selection of the cars to be inspected be non-arbitrary; (3) that the safety of the motorists be assured; (4) that the roadblock be systematic in nature; and (5) that the roadblock be established pursuant to a pre-arranged plan of law enforcement which is established by supervisory personnel.[11]

Applying the foregoing criteria to the roadblock in the case at bar, the roadblock clearly passes constitutional muster. The roadblock in question was a joint effort of the Indiana State Police and the Hendricks County Sheriff's Department. The roadblock was implemented in accordance with a plan that had been previously devised by the Marion County and Morgan County Police Departments. Prior to the roadblock, the State Police publicized, in various newspapers, the general plan to conduct roadblocks but did not specify the location of the

---

[11] In *State v. Deskins*, 234 Kan. 529, 542, 673 P.2d 1174, 1185 (1983), the court suggested that the following factors be considered in determining whether a roadblock, conducted to detect drunk drivers, meets the balancing test in favor of the state: (1) the degree of discretion left to the officer in the field; (2) the location designated for the roadblock; (3) the time and duration of the roadblock; (4) standards set by superior officers; (5) advance notice given to the public; (6) advance warning to the individual approaching motorist; (7) maintenance of safety conditions; (8) degree of fear or anxiety generated by the mode of operation; (9) average length of time each motorist is detained; (10) physical factors surrounding the location, type, and method of operation; (11) the availability of less intrusive methods for combating the problem; (12) the degree of effectiveness of the procedure; and (13) any other relevant circumstances which might bear upon the test.

roadblocks. In addition, the particular location of the roadblock at issue was selected by a member of the sheriff's department and the supervisor of the State Police in Hendricks County. The decision was based upon information, obtained from State Police records, which disclosed that the particular location generated numerous fatal and nonfatal accidents involving alcohol.

According to the plan, westbound traffic on U.S. 40 was stopped by approximately eleven uniformed officers who were visible on the highway. These officers blocked off the left westbound lane whereby all traffic was funneled into the right westbound lane by means of flares and the lights from police cars.[12] Non-selectively, cars were stopped in consecutive groups of five.[13] Absent the detection of drinking or other violations, drivers were detained for no more than two or three minutes during which time other traffic was permitted to pass. After a group of five vehicles had been inspected and released, the next group of five cars traveling west was detained and the procedure was repeated.

Upon the discovery of an operating violation or alcohol consumption was detected, the driver was instructed to drive into a nearby parking lot. A driver suspected of alcohol consumption was given a field blood alcohol test. Any driver whose blood alcohol content was over the presumptive limit of .10 was transported to the Hendricks County jail where a breathalyzer test was administered. If the driver failed the breathalyzer test, he or she was arrested.

The roadblock, in this case, did not involve the unbridled discretion of the officer in the field which was deemed oppressive and subject to abuse in *Prouse*. In view of the considerable injury and damage caused by the drunk driver, as well as, the vital interest of every citizen in being protected

---

[12] In addition, the roadblock area was well-lighted. Indeed, numerous motorists, upon sighting the roadblock, reversed their direction and fled.

[13] The officers had absolutely no discretion to depart from this procedure.

upon the highways, the public interest in a properly conducted roadblock outweighs the individual's right to be free from unfettered intrusion upon his or her Fourth Amendment rights. The initial stop of the Petitioner, in this case, was under conditions which met the requirements for a constitutional momentary seizure and the resultant seizure was not unreasonable under the Fourth Amendment. Accordingly, since the Petitioner has failed to present a substantial federal question, the writ must be dismissed.

CONCLUSION

For the foregoing reasons, the Respondent, the State of Indiana, respectfully requests that the petition for a writ of certiorari be denied.

Respectfully submitted,

LINLEY E. PEARSON
Attorney General of Indiana

WILLIAM E. DAILY
Deputy Attorney General

LISA M. PAUNICKA
Deputy Attorney General

Office of the Attorney General
219 State House
Indianapolis, Indiana 46204

Attorneys for Respondent